

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1136 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1-5 No

HARIPRASAD POPATLAL MEHTA

Versus

JAYANT VITHALRAO GAEKWAD

Appearance:

MR PR THAKKAR for Petitioner

MR JITENDRA MALKAN for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 02/09/98

ORAL JUDGEMENT

Heard Mr. P.R. Thakkar learned counsel for the petitioner and Mr. J.M. Malkan learned counsel appearing for the respondent caveator. The suit premise consists of two rooms and one balcony on second floor of the building in busy area of Vadodara City. It was rented in the year 1951 for a sum of Rs. 13/- per month. It appears from para 9 of the judgement of the appellate court that the property is in a dilapidated condition. It requires to be repaired. It is also an admitted fact that the gallery portion was removed by the defendant and it was repaired and a ladder was put for going upward which has also fallen down and the defendant cannot use

the premises. The appellate court has decreed the suit on the ground that the defendant-tenant petitioner has acquired a suitable alternative accommodation.

It is contended by the learned counsel for the petitioner that the tenancy of the suit premises is composite that is for residence and business. Relying on the decision of the apex court reported in KARTAR SINGH VS. CHAMAN LAL reported in AIR 1969 SC 1288 and the decision of this court in MAZMUSHA VS. SAIFUDDIN MOHAMEDBHAI reported in 21 GLR 4 it is submitted that in the case of composite tenancy the provisions of Section 13(1)(1) of the Bombay Rent Act are not attracted.

Mr. Malkan, learned counsel for the respondent submits that the trial court framed issue 'as to whether the plaintiff succeeded in proving the suit premises have been let to the defendant for residential purpose'. This issue has been decided in favour of the plaintiff. It is held by the trial court that a dominant purpose of the suit premise is for the residential purpose. This finding of fact has not been disturbed by the first appellate court. In view of this, the contention of the petitioner has no substance. It is also submitted by Mr. Malkan that the suit premises was rented out in the year 1950-51 when it was outside the city wall of old Baroda and it is difficult to imagine that in such area one would carry any business in second floor. The finding on the question of acquiring alternative suitable accommodation is concerned, the same being a finding of fact does not call for any interference by this court in its revisional jurisdiction. In view of this, I find no merit in this revision application and the same is accordingly rejected.

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